

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

October 5, 2011

Ms. Kathryn Ruemmler
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Ms. Ruemmler:

Pursuant to Rules X and XI of the U.S. House of Representatives, we write today seeking additional documents and information regarding the role of the White House in the review of the loan guarantee issued to Solyndra, Inc. (Solyndra) by the Department of Energy (DOE).

Documents produced to the Committee on September 30, 2011, by the White House and the Office of Management and Budget (OMB) demonstrate that the White House was closely involved in the monitoring of the Solyndra loan guarantee after it was issued in September 2009. For example, in anticipation of President Obama's visit to Solyndra in May 2010, top White House officials discussed the financial condition of the company after Solyndra's auditors, PricewaterhouseCoopers, cast doubt on Solyndra's ability to continue as a going concern. On May 24, 2010, a DOE official emailed Ron Klain, Chief of Staff to Vice President Biden, to say that "we believe the company is okay in the medium term, but will need some help of one kind or another down the road." Mr. Klain forwarded that email to Valerie Jarrett and stated that, based on DOE's evaluation, "there are some risk factors here — but that's true of any innovative company that POTUS would visit. It looks like it is OK to me, but if you feel otherwise, let me know." Ms. Jarrett responds that, "I'm comfortable if you're comfortable."

Later that same day, OMB staff traded emails about Solyndra. Their outlook on Solyndra's prospects, however, was less positive. In one email, an OMB staff member stated, "I am increasingly worried that this visit could prove embarrassing to the Administration in the not too distant future, given 1) what we heard today about DOE that Solyndra is delaying their IPO at least until the end of the year, and 2) what the auditors said about Solyndra making it through the year absent new financing It might be worth flagging to policy officials given this high-profile visit." Other emails produced by OMB also show that OMB staff did not believe that

DOE was adequately monitoring the loan guarantees it had issued. On March 10, 2010, following a call between OMB and DOE staff to discuss loan guarantees, one OMB staffer wrote that “DOE’s ‘system’ for monitoring loans is quite problematic (barely any review of materials submitted, no synthesis for program management, inherent conflicts in origination team members monitoring the deals they structured, etc.) and does not seem to be a program priority”

Despite numerous concerns at OMB and the DOE about the financial health of the company, President Obama visited the Solyndra facility in late May 2010. Less than seven months later, Solyndra was out of cash, and defaulted on its loan guarantee agreement with DOE. In late 2010 and early 2011, DOE engaged in discussions with Solyndra to restructure its loan guarantee, an agreement that ultimately resulted in DOE being subordinated to Solyndra’s investors for the first \$75 million recovered in the event of a liquidation. Once again, OMB and DOE staffs seem to have disagreed with respect to their assessments of the company’s financial prospects.

While DOE staff concluded that restructuring the agreement would improve its collateral in the Solyndra deal and improve the government’s chances of recovery in the event of a liquidation, OMB staff questioned whether restructuring the deal would do anything to help the company avoid default or improve the government’s recovery. In an email exchanged among OMB staff on January 31, 2011, one OMB staff member stated that “[w]hile the company *may* avoid default with a restructuring, there is also a good chance it will not. . . . At that point, additional funds would have been put at risk, recoveries *may* be lower, and questions will be asked” The restructuring of the Solyndra loan guarantee was finalized in late February 2011; five months later, the company announced its plans to file for bankruptcy and, one week later, was raided by agents from the Federal Bureau of Investigation.

At certain critical points in the history of Solyndra’s loan guarantee, the two agencies charged with oversight of the DOE Loan Guarantee Program disagreed about Solyndra’s financial condition. Yet, decisions were made to stand behind the guarantee, resulting in the President’s visit to the company in May 2010 and the decision to restructure the deal and subordinate the taxpayer funds in early 2011. In order to better understand the involvement of the White House in the review of the Solyndra loan guarantee and the Administration’s support of this guarantee, we ask that you provide the following:

1. All communications among White House staff and officials relating to the \$535 million loan guarantee to Solyndra by the Department of Energy between January 20, 2009, and the present.

Please contact Committee staff no later than 5:00 p.m. on October 6, 2011, to discuss a schedule for production. This schedule should provide for production of the documents no later than October 14, 2011. An attachment to this letter provides additional information about how to respond to the Committee’s request.

Please do not hesitate to have your staff contact Karen Christian and Todd Harrison with the Committee with any questions about this letter.

Sincerely,



Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The term "White House" means and refers to any its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the White House, including the Executive Office of the President and the Office of the Vice President and those offices' subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the Executive Office of the President and/or the Office of the Vice President.

8. The term "Solyndra, Inc." means and refers to any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of Solyndra, Inc.

9. The terms "you" or "your" mean and refers to

For government recipients:

“You” or “your” means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.